

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
CITY OF ZILLAH,

Appellant,

v.

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Respondent.

PCHB No. 86-138

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the appeal from Department of Ecology Order No. DE 86-537 requiring a Class II wastewater treatment plant operator at the city's sewage treatment plant, came before the Pollution Control Hearings Board, Lawrence J. Faulk, Chairman and Presiding, and Wick Dufford and Judith Bendor, Members, in Yakima on April 2, 1987.

Witnesses were sworn and testified. Exhibits were examined. Malinda Avery of Jackie Adkins & Associates recorded the proceedings.

FINDINGS OF FACT

I.

Appellant City of Zillah is the owner and operator of a secondary sewage treatment plant. The facility is categorized as a Class II plant by respondent, Department of Ecology, pursuant to the rating system of WAC 173-230-140.

II.

As owner and operator, appellant is responsible for the proper management of the plant. In order to carry out this responsibility the city employs an operator who is qualified to operate a Class I plant. This Class I operator has operated the waste treatment plant since January 1985.

III.

On July 2, 1982, Ecology issued a waste discharge permit to Zillah under the National Pollutant Discharge Elimination System (NPDES) process. Special permit condition S5. contains the following:

"An operator certified for a Class II plant by the State of Washington shall be in responsible charge of the day-to-day operation of the wastewater treatment plant."

From 1982 until the end of 1984 the city had a certified Class II operator operating the sewage treatment plant. When this person left the city's employ, the current operator was moved into the job. He was given a nonrenewable temporary certificate allowing him to fill the vacated position for not more than a year. Such a temporary certificates intended to provide time for a replacement operator to get qualified.

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IV.

In the spring of 1986, Ecology informed Zillah of shortcomings in fulfilling the reporting requirements of the NPDES permit. Reports were not always timely and, when received, omitted important data for verifying compliance with the effluent limitations of the NPDES permit. At that time the City's treatment plant operator was doing other tasks for the City and devoting only part of his time to the plant operator's job.

V.

On June 6, 1986, Ecology issued Notice of Violation No. DE 86-537. A pertinent part of it reads as follows:

Starting in January 1985, the City of Zillah has been operating its sewage treatment plant without a properly certified Class II operator.

Also starting in January, 1985, the City of Zillah has been submitting Discharge Monitoring Reports that do not contain all the data required by the City's NPDES Permit (No. WA-002016-8) which was issued July 2, 1982.

Because of the identified operator qualification and permit reporting problems, Ecology asked the City to take the following action:

The City of Zillah shall provide adequate time and support for a properly certified Class II operator to perform all required operational and compliance analyses, to prepare the monthly reports required in the city's NPDES permit, and to properly operate and maintain the plant equipment and processes.

1 VI.

2 Not being satisfied by Zillah's response Ecology followed the
3 Notice of Violation with an Order (No. DE 86-537) issued July 23,
4 1986. In pertinent part the Order reads as follows:

5 IT IS ORDERED THAT City of Zillah shall, upon
6 receipt of this Order, take appropriate action
in accordance with the following instructions:

- 7 1. The City of Zillah shall provide
adequate time and support for the
8 current treatment plant operator to
perform all required operation and
9 compliance analyses to prepare the
monthly reports required in the city's
10 NPDES Permit, and to properly operate
and maintain the plant equipment and
11 processes.
- 12 2. If the current operator is unable to
pass the Class II certification exam at
13 the next available test period after
this Order, he shall be replaced within
14 3 months by a properly certified Class
15 II operator.

16 VII.

17 On August 7, 1986, Zillah, feeling aggrieved, appealed paragraph 2
18 of this Order to this Board.

19 VIII.

20 Since the issuance of the Order, Zillah has responded positively
21 to the problem. The city has sent the plant operator to a total of 16
22 training courses relevant to treatment plant operation. Management of
23 the plant has been made his full-time job. A qualified operator has
24 been brought in from time to time to provide technical assistance and
25
26

1 training, providing help particularly in the reporting and other
2 paper-work aspects of the job.

3 IX.

4 Ecology's most recent treatment plant inspection, in February of
5 1987, showed that reporting deficiencies have not been altogether
6 eliminated. But, there are signs of improvement, and the agency does
7 not believe that discharges from the plant are violating the relevant
8 effluent limitations.

9 Nevertheless, there remains the issue of operator qualification.
10 The city's operator meets the educational and experience
11 requirements. Yet despite several attempts and near misses he had
12 not, as of the date of hearing, passed the Class II operators test.
13 His latest effort, in February 1987, fell short by a few points. He
14 was at the time of hearing gearing up again to take the test in June.

15 X.

16 Appellant's defense rests primarily on the assertions that the
17 city's sewage treatment plant is operating satisfactorily, and that
18 the current operator is competent to operate the Class II treatment
19 plan even though he is rated a Class I operator. The city argues that
20 its efforts amount to substantial compliance with the intent of
21 Ecology's Order.

22 XI.

23 Any Conclusion of Law which is deemed a Finding of Fact is hereby
24 adopted as such.

25 From these Findings of Fact the Board comes to these

26
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CONCLUSIONS OF LAW

I.

The Board has jurisdiction over these matters and these parties.
Chapter 90.48 RCW, Chapter 43.21B RCW.

II.

The statute on regulation of treatment plant operators requires that the operator responsible for the day to day operation of a waste treatment plant be certified to operate the class of plant he or she is running. RCW 70.95B.030, 050, and 120. Except for certain grandparent rights, not applicable here, the only certification available without passing the examination is the one-time temporary certification for filling a vacancy, which in the instant case has long-since expired. RCW 70.95B.080.

III.

The requirement for a Class II operator is an explicit provision of Zillah's NPDES permit. Failure to comply with this condition violates the permit, and, thus, violates the state's water pollution control law. RCW 90.48.180, and 260.

IV.

RCW 90.48.120 reads in pertinent part:

(1) Whenever, in the opinion of the department, any person shall violate or creates a substantial potential to violate the provisions of this chapter, or fails to control the polluting content of waste discharged or to be discharged into any waters of the state, the

1 department shall notify such person of its
2 determination by registered mail. Such
3 determination shall not constitute an order or
4 directive under RCW 90.48.135. Within thirty
5 days from the receipt of notice of such
6 determination, such person shall file with the
7 department a full report stating what steps
8 have been and are being taken to control such
9 waste or pollution or to otherwise comply with
10 the determination of the department. Whereupon
11 the department shall issue such order or
12 directive as it deems appropriate under the
13 circumstances, and shall notify such person
14 thereof by registered mail. (emphasis added)

15 V.

16 In this case, the requirements of the law are clear and
17 inflexible. We therefore must reject the City's substantial
18 compliance argument. Zillah is legally required to have a Class II
19 operator on the job. We conclude that the Order issued to Zillah here
20 (No. DE 86-537) was "appropriate under the circumstances."

21 The pendency of this appeal has, in practical effect, lengthened
22 the time for solving the problem. Zillah has now gone for two and a
23 half years without a properly certified operator. We do not believe
24 that, hereafter, the city can legitimately claim that it has not been
25 given adequate time to comply.

26 VI.

27 Any Finding of Fact which should be deemed a Conclusion of Law is
hereby adopted as such.

From these Conclusions the Board enters this

ORDER

Department of Ecology Order No. DE 86-537 is affirmed, provided that the City of Zillah has three months from the date of receipt of this order to obtain the services of a certified Class II operator.

DATED this 22nd day of June, 1987.

POLLUTION CONTROL HEARINGS BOARD

 6/22/87

LAWRENCE J. FAULK, Chairman



WICK DUFFORD, Member



JUDITH A. BENDOR, Member